

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 273 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

AMRUBEN SAYAD YAMANI

Appearance:

MR AK CLERK for Petitioner
PARTY-IN-PERSON for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/05/2000

ORAL JUDGEMENT

This Second Appeal has been filed by the
Union of India through Secretary, Communication
Department, Government of India, New Delhi against the
respondent-original plaintiff Amru Vub Sayad Yamani
against judgment and order dated 31st December, 1984 in

Regular Civil Appeal No. 216 of 1981 passed by the Joint District Judge, Rajkot dismissing the appeal and confirming the judgment and decree dated 25th August, 1981 in Civil Suit No. 667 of 1976 passed by the Civil Judge (S.D.), Rajkot.

2. The respondent-original plaintiff filed the above suit for a declaration about his right to receive salary by process of stepping up in his existing grade on account of anomaly created by operation of fixation of salary with respect to the promotee whereby the person in the same cadre of junior to him was fixed at a higher pay scale than what he has been fixed with respect to him, on the allegation that the respondent-plaintiff joined the post with time scale clerk in the Posts and Telegraph Department under Divisional Engineer, Telegraphs, Rajkot in the year 1952. At the relevant time, one P.S.Shah, Junior to the plaintiff was also working as LSG clerk. The Unit was bifurcated into three places, i.e. Rajkot, Baroda and Ahmedabad. Options were invited from time scale clerk for the posting at any of the places from Rajkot, Baroda and Ahmedabad. Mr. Shah who was junior, opted for Baroda office. The plaintiff opted for Rajkot office. There was some exigency to fill up one post of lower selection grade clerk at Ahmedabad, where PS Shah who was junior to the plaintiff opted for Ahmedabad for the work in AOTR office at Ahmedabad in the time scale clerk. He was drawing basic salary of Rs.560/-, higher grade, while the plaintiff was drawing basic salary of Rs.515/- per month. That was the promotional post to be filled in from the common gradation list of time scale clerks on the basis of the entire circuit. Mr. P.S.Shah who was working as lower selection grade clerk and who was junior to the plaintiff was given promotion to LSG clerk from time scale clerk drawing basic salary of RS.560/- per month, while in the same grade, the plaintiff was drawing salary of Rs.515/- per month. Thus, there was a difference of Rs.45/- per month. The plaintiff required the stepping up and fixing the pay aequal to his junior from 3.9.64 to 22.10.67 and from 16.9.68 to 3.5.70. The plaintiff further claimed the higher grade of Rs.250/- from the date of 24th October, 1969 when he was given promotion to LSG clerk on circle basis.

3. The trial court framed 9 issues and came to the conclusion that the plaintiff has proved that Mr. P.S.Shah was junior to him in seniority list. The trial court also found that the defendants treated the plaintiff's service in unequal manner in arbitrary way in violation of Article 16 of the Constitution of India.

The trial court also found that the plaintiff was entitled to get stepping up of his pay fixation of his pay over Mr. P.S.Shah at the rate of RS.560/- per month from the date Mr. Shah was promoted. The suit was not bad for non-joinder of necessary parties. The suit valued for the purpose of court fees was not proper and the court fees paid was insufficient and the plaintiff was required to make sufficient court fees of Rs. 14/within a week. The suit was not barred by period of limitation. The suit was also not barred by estoppel, latches and acquiescence. The plaintiff was also entitled to get reliefs as claimed. The trial court decreed the suit for a declaration that the plaintiff was entitled to stepping up of his pay equal to that of P.S.Shah at the rate of RS.560/- per month and the plaintiff was entitled to stepping up of his pay from the date when he was promoted with all the incidental benefits of the fixation of pay arrears etc. The defendants were directed to step up the pay of the plaintiff equal to that of Mr. Shah from the date the plaintiff was getting less pay than Mr. Shah on the present post of LSG clerk with all consequential benefits. The appellants-defendant was also directed to pay costs of the suit.

4. The Union of India, being aggrieved by the said judgment and decree filed Regular Civil Appeal No. 216 of 1981 before District Court. The District Court, examined the material on record and by its judgment and order dated 31st December, 1984 dismissed the appeal and cross-objections upholding the judgment and decree of the trial court in its entirety.

5. The appellant-Union of India has therefore filed the present Second Appeal against the concurrent findings of both the courts below.

6. Heard the learned counsel for the appellant Union of India and the respondent party-in-person. The learned counsel for the appellant submitted that other person Mr. Shah was promoted to the higher grade only on the basis of a stop-gap arrangement in exigency as the respondent has given option to be posted at Rajkot. Hence, the respondent was not asked for the post of higher grade and though Mr. Shah was junior to the respondent was given promotion on ad hoc basis purely on temporary basis. Of course that order continued for about four or five years and that promotion was given in officiating capacity on the basis of the local seniority at Baroda. As the respondent was posted at Rajkot at his own option, he could not get promotion.

As such, the courts below have erred in giving a stepping up grade and fixing the pay equal to Mr. Shah who was junior to the respondent. The second contention of the learned counsel for the appellant is that the suit was barred by limitation. The Limitation Act provides three years for institution of civil proceedings, but he has filed the suit in the year 1976 though his representation was rejected on 3.2.1971. The trial court has also erred in entertaining the suit which was not entertainable due to limitation and the lower appellate court has erred in confirming the findings of the trial court.

7. I have considered the submissions made on behalf of the appellant-original defendant and of the respondent who has argued as party-in-person and perused the relevant record. The respondent-plaintiff claimed higher grade, stepping up and fixing of pay equal to Mr. Shah who was junior to him for a period from 3.9.64 to 22.10.1967 and for a period from 16.9.68 to 3.5.70. For this purpose, Mr. Shah who was junior to him was promoted and worked on higher post and he got the higher grade of Rs.250/- per month as basic pay, while the plaintiff got the basic salary of Rs.210/- per month. As such, the plaintiff was entitled for stepping up and fixation of pay equal to Mr. Shah for the period for which Mr. Shah received the payment of salary and the respondent-plaintiff also claimed higher grade of Rs.250/- per month from his promotion on the higher post from 24.10.69. The trial court has considered the fundamental rule no. 22(c) which requires a Government servant holding the post in substantive, temporary or officiating capacity is promoted to any other post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has occurred.

The said Rule further provides that in order to remove the anomaly of the Government servant promoted or appointed to higher post on or after 1.4.61 drawing the lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted and appointed subsequently to the another identical post, in such case, it is decided that the pay of senior officer in the higher post be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer. The

anomaly should be directly as a result of the application of fundamental rule 22(c).

Thus, both the junior and senior belonging to the same cadre and post in which they have been promoted or appointed are identical and in the same cadre. Secondly, the scale of pay in the higher post in which they are entitled to draw pay and are also identical and anomaly should be directly as a result of application of provisions of fundamental rule 22(c) in the revised pay scale.

8. The trial court after considering the fundamental rules and other relevant provisions of the Government Rules, has come to the conclusion that the plaintiff was entitled for his grade. It is also pertinent to note that the initial appointment of Mr. Shah was made for a period of one month on ad hoc and temporary basis and under rules, that appointment should not be continued for a period not exceeding four months. The departmental knowing that the plaintiff was senior to Mr. Shah, no information or intimation was given to him to join the higher post at Ahmedabad, though Mr. Shah continued on his post always for a period of about five years. It was the duty of the department to give charge of promotional post to the respondent at least after four months.

9. So far as the question regarding limitation is concerned, Mr. Shah was given promotion from 3.9.64 to 22.10.1967. Thereafter, he was again promoted on 16.9.1968 and continued till 3.5.70. The plaintiff made his representation in the year 1971 for the reliefs claimed in the plaint and that representation was rejected on 3.2.1971. The suit has been filed in the year 1976. As such, according to the learned counsel for the appellant, the suit was barred by limitation and not entreatable in law. I have considered this aspect also. Mr. Shah was promoted on 3.9.64. Then on 16.9.1968 which continued till 3.5.70. He made a representation in the year 1971 to the authorities concerned, but that representation was rejected on 3.2.1971. Thereafter, the plaintiff preferred a departmental appeal before appropriate authority and that appeal was rejected in the year 1974. The suit was filed in the year 1976. As such the suit was within the prescribed period of limitation.

10. Thus, the courts below have not committed any error in arriving at the conclusion on the basis of the material and evidence on record, rules and

regulations and Government orders.

11. The learned counsel for the petitioner could not point out anything in order to make out a case that this appeal involves any substantial question of law for determination of this Court. Therefore, this appeal is liable to be dismissed. Accordingly, this appeal is dismissed.

The respondent, who appears as party-in-person informed this Court that execution proceedings of the judgment and decree of the trial court were stayed by this court on 6.10.1995 in Civil Appeal No.1883 of 1995. That interim relief stands vacated forthwith.

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